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OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable John D. Reed, Commissioner,  
Bureau of Labor Statistics  
Austin, Texas

Dear Mr. Reed:

Opinion No. 9-4386<sup>4324</sup>

Re: Whether or not any part of Section 1, Article 5106, R. C. S., is valid.

Your letter asking for an opinion from this Department upon the above subject matter is as follows:

"Article 5106, R.C.S., commonly termed the Blacklisting Law, states in part that 'Either or any of the following acts shall constitute discrimination against persons seeking employment:

"1. Where any corporation or receiver of the same, doing business in this State, or any agent or officer of any such corporation or receiver, shall blacklist, prevent or attempt to prevent, by word, printing, sign, list or other means, directly or indirectly, any discharged employee, or any employee who may have voluntarily left said corporation's services, from obtaining employment with any other person, company, or corporation, except by truthfully stating in writing, on request of such former employee or other persons to whom such former employee has applied for employment, the reason why such employee was discharged, and why his relationship to such company ceased.'

"In an opinion from your Department dated July 25, 1941 (No. 9-3862), it was stated that Section 3 of this Article had been declared by the Supreme Court of Texas to be unconstitutional. Will you please advise this Depart-

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ment whether or not the above quoted part of this Law is still valid, in order that we may take proper action on a matter now pending before this Department."

In the case of St. Louis, Southwestern Ry. Co. v. Griffin, 171 S. W. 703, Chief Justice Brown, speaking for the court, held that Article 594 of the statutes at that time was unconstitutional and void, saying:

"The soundness or justice of the reason which prompts refusal or discharge of an employee does not affect the question of the constitutional right to exercise that authority. It may be that the party in acting upon what is a mere 'whim', i. e., without any foundation in fact or right; but nevertheless his constitutional right to deny or terminate employment exists and the Legislature cannot for any reason make such action a crime on the part of the person or corporation exercising that constitutional power. \* \* \*

"The Act is in violation of the Constitution of this State and of the United States, and is void."

This Department held in Opinion No. O-3562, to which you refer, that Section (3) of S. B. No. 253, Regular Session, 41st Legislature (1929), being the present black-listing statute, as carried in Vernon's Civil Statutes as Article 5196, is void.

S. B. No. 253 and old Article 594 are almost identical in words, and are in substance the same.

The Supreme Court, it will be seen, in the case above cited did not put its decision of invalidity upon any particular section of that Act, but after a liberal reference to the various sections, actually held the entire Act void.

The present Act, therefore, in the light of the Supreme Court decision, cannot possibly stand. We therefore answer your question in the negative -- that is to say, no part of Article 5196 of Vernon's Codification of the Civil Statutes is valid.

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Trusting this will be a sufficient answer to  
your inquiry, we are

APPROVED FEB 11, 1942

*Wm. Cullen*  
FEB 11 1942  
ATTORNEY GENERAL

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

CS-MR

